IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

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People of State of California,
Plaintiff,

vs. CLOSING REPLY BRIEF.

Carl Schultz,- - - - - Defendant.

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The order of the Court was that counsel for plaintiff be allowed five days to file a brief and that the defendant might reply, if he so desired. This ruling followed the submission of the case upon the facts set out in the Statement on Appeal

The arguments made in plaintiff's brief just filed are only a repetition of the oral arguments made before the Court. They advance nothing new. They leave the case as is suggested by this court that the defendant was not practicing "Any of these modes of treatment within the meaning of the statute in question. Indeed the charge in this case is not, that he was practicing some other mode or form of treatment, but that he was practicing medicine without a license."

Replying to the brief of the plaintiff it may be well to note that plaintiff has not correctly quoted the language of the Greenall decision, wherein the Supreme Court was careful to eliminate any phraseology intimating that the act of 1907 might be constitutional. In the Ex Parte Greenall case the decision of the Supreme Court published on June 30th, 1908, Cal. Decisions, was later corrected and published July 7th, 1908, Cal. Decisions, as to that particular paragraph thereof quoted on page 1 of plaintiff's brief, and as corrected read, "In view of our conclusion upon the question of the sufficiency of the complaint it is unnecessary to consider the contention of petitioner that the act of 1907 is unconstitutional".

The cases cited in plaintiff's brief are based upon

the statutes of other states varying from the provisions of the 1907 statute of California. And the cases are not parallel: For instance plaintiff's brief quoting from 87 N.W. 888 says," Respondent exhibited a sign as "Doctor Magnetic Healer" and was called on and treated various persons and made a certificate of death. The real facts in that case are that the respondent had made an affidavit that he was a legalized medical practitioner and was practicing medicine, following the Michigan Statute which provided" * * * every person qualified under the provisions of this act shall * * * file with the County Clerk * * * a statement sworn to * * * setting forth, first, if he is actually engaged in practice in said County" etc. Respondent had in compliance with that requirement filed the following affidavit. "State of Michigan, County of Kent: I, William Wallace Phippin, do solemnly swear that I am now in the practice of medicine in the County of Kent, State of Michigan. That I have been engaged in the continuous practice of medicine in Canada, county of Huron, nine years; in the State of Michigan for one year.

Wm. Wallace Phippin, Medical Practitioner.

Sworn and subscribed before me, this 24th day of June, 1884. Cornelius L. Harvey, Notary Public, Kent County, Michigan."

Counsel for plaintiff has quoted from a magazine article written by some physician of New York particular instances where extreme interpretation has been given New York statutes, but under the rule the defendant need not reply thereto as no report citations are given. No case has been cited from California showing any ruling of our Supreme Court contrary to the opinion given in the reversal of the verdict in this case. The attorney for plaintiff would have the court believe that its judgment should be reversed because a jury in the police court had already decided the law and the facts.

It does not appear from the statement of facts that de-

fendant ever held himself out as a medical practitioner or that he diagnosed Mr. Sperling's condition. To Diagnose is to examine the symptoms with a view of prescribing a remedy for the disease the symptoms indicate. The testimony shows that Mrs. Sperling went to see the defendant and talked about her husband and then later she took her husband to Schultz' place. Obviously there is no statement of fact which could be by any stretch of the imagination be considered a diagnosis. And is an undisputed fact that defendant did not pretend that he was a medical practitioner, but instead plainly stated that he did not claim or pose to be a medical expert.

According to the theory of Attorney for plaintiff the druggist diagnoses the simple ailments of his customers without lawful authority therefor and yet no one has ever heard of a druggist being arrested for violating the medical law. "In the enforcement of the law and not in the letter lies the justness thereof", so runs the ancient saying, so says the United States Supreme Court. In the Lochner case 198 U.S. 56, cited at length in the brief of defendant on appeal.

Much stress has been laid upon the term "Diagnosis". The evidence shows defendant made his contract with Mrs. Sperling alone. No showing is made that defendant ever saw Mr. Sperling until that person went to defendant's place to board and receive baths. No diagnosis of any kind was shown, but even if one had been shown, it is obvious that the medical men have no copy-right monopoly on the use of that word. The judge of a Juvenile Court diagnoses the case of a delinquent child. The teacher diagnoses the difficulties of a backward pupil. The barber diagnoses the job of shaving his customer to see the inclination of the stubble growth of beard that he may not shave against the grain. The autoist examines his gas engine to ascertain what causes his engine to stop when it is expected to run. The farmer diagnoses his

soil to ascertain the reason for crop shortage or to determine th best crops to plant. The lawyer diagnoses his client's case, and so on in ad infinitum, through the entire stretch of business affairs; even astronomers, observing an eccentricity in the movements of our planets, turned their telescopes in search of the new world Vulcan in their diagnosis of unexplained variance in planetary orbits. The word diagnosis belongs to the common people and not to the followers of any certain branch of one philosphic occupation of guessing or calculating the cause of disease and the possible modes of cure. Why should not the bathing attendant diagnose the condition of his customer to ascertain if he can stand a very cold or a very warm bath, the same as the barber does to ascertain if the skin of his customer's face is such as it may stand a close shave.

The medical act of 1907 briefly stated provides for the appointment of a State Medical Board of eleven members, who are selected from nominees named by the adherents or followers of certain schools of medicine mentioned in the act. These nominees and appointees need not be graduates of medical schools and need not be medical practitioners. The act does not require that the board of examiners shall be composed of men having any special knowledge in the practice of either medicine or surgery or that they shall have any knowledge concerning the same. From the reading of the act a steam board engineer, a farmer or a merchant might be appointed on the board of examiners or the board might be made up of persons with vocations as varied as the men of an average jury panel. That they must take the oath of office and in so doing declare that they are licensed practitioners, etc. but it is a general rule that perjury cannot be grounded on the oath of office. "A promissory or official oath, i.e. one taken in qualifing for office, cannot, though false, be the subject of an indictment for perjury" Am. & Eng. Enc. of Law, Vol. 18, P.309. Hence such declaration in the oath is a nullity and neither

affects their standing as appointees nor endangers them to prosecution if such declaration be false; . . Moreover it is contended by defendant that the appointees of the present medical board from the osteopathic society were not and are not legal practitioners on account of the invalidity of the law commonly called the Osteopathic Act, see Stats. 1901, 113 Ch. XCIX.

The Board of Medical examiners may thus be made up of men from non-skilled vocations. For there is little doubt but that as the law stands a man knowing nothing of the science or practice of medicine might lawfully become a component part of our board of medical examiners. Whether or not such a condition is likely to occur has nothing to do with the legality of the act. It must be construed with a view that such might occur. Granting however, that such situation does not exist we still find this condition, to-wit: a law providing for the appointment of members from certain schools of medicine. That it is a compromise measure appears from the face of it. It seeks a truce between the warring schools named. It apparently presumes that these schools are practicing all the beneficial forms of treating the ills of humanity. It is within the memory of this generation that allopathy and Homeopathy bitterly fought each other, each claiming that within its tenets was the only rule for and road to health.. As the act stands the State Board now claims the right to pass upon the qualifications of applicants who desire to practice other modes or methods of treating human ills. Confessedly not believing in such other modes and refusing to study or attempt to understand such other modes, they nevertheless profess to be able to give such an examination as practically tests the applicants fitness to practice such other modes or modes of treatment. The subjects upon which, according to the statute of 1907, the applicants must be examined, may or may not be embraced in the preparation made by such applicant for practicing the, "other mode of treatment", and

such mode of treatment may not call for any particular knowledge in all or in a part of the subject enumerated in the act of 1907, yet such applicant may not be examined except that he also qualify as versed in each of such subjects named in the act. All applicants must take the same examination and though all applicants take the examination with perfect scores, only certain ones may practice medicine.. And those certain ones may thereupon practice any other mode or system of healing the sick or afflicted. Whereas those others who have taken the same examination may not practice Allopathic, Homeopathic, Electic or Osteopathic modes of treatment but receive an inferior ranking; For the board may issue three forms of certificates and the Naturopath though skilled in all the learning of the Allopath may not practice Allopathic medicine. The applicant for license to practice Allopathic Medicine may practice any other mode or system of treatment upon passing the one examination required, but the applicant for some other mode or system of treatment may not on a like examination practice any thing, but the system he has declared he intends to practice. It is a poor rule that will not work both ways. Were the act constitutional on this point it would provide that when a man has once passed the examination he shall thereafter be competent to practice any mode of healing or treating the sick or afflicted that any other person who passed a like examination is permitted to practice. It will thus be observed that the act was drafted with the purpose of showing favoritism and that such purpose appears on the face of the act and the court under the well construed rule of statute interpretation may take judicial notice thereof. There is something radically wrong in a law that denies equal rights to persons equally skilled in the same learning and science. The examinations require the Naturopath applicant to qualify in such subjects as gynecology, toxicology and pathology and yet his system or mode of treatment does not require a special knowledge of these branches of

medical research.

The examining board knowing nothing of the training of naturopaths or of the methods adopted by them, is required by the act of 1907 to give a practical examination to applicants desiring to practice naturopathy. A parallel case would be a board composed of steam engineers attempting to give an examination to applicants for electrical engineering or gas motor engineering licenses and trying to make the examination a practical one. Obviously not knowing the subjects for examination they could not give a practical examination. To make the parallel complete; Suppose the subjects named for examination were coal burning furnaces, oil burners, flues, steam pressure, exhaust and boilers. The fallacy of such an examination as a test for electrical or gas motor engineers is too apparent to require further demonstration. No naturopaths have tried to take the examinations given by the State Board of Medical examiners. They are as completely shut out as would be electrical or gas motors engineers, if a Board of Steam engineers should give or attempt to give examinations on the enumerated subjects, as a practical test of the qualifications of applicants for such other branches of engineering. It would be difficult to hold as constitutional such an engineering law when applied to the cases illustrated.

The Christian Science doctor instructs his patient to believe that a certain state or condition of mind when attained will cure disease, all for a monetary consideration which furnishes the practitioner with his income. It is well known that the condition of a patients mind has a tremendous effect on disease. It is said that Grief entering Bagdad after the ravages of a pestilence met Plague coming out and charged Plague with the death of unnumbered thousands; Plague answered the charge by saying," I slew but one-third of the dead,- the other two-thirds died of fright." If the health of the community is not affected by christian science

it is a humbug. If health is affected by christian science treatment, then the christian science practitioner should not be exempt from the provisions of the act. The naturopath induces his customers to live a simple life, bathe often and eat plain foods. There is no trifling with the most vital organ of the human being, the mind. He does not believe in drugs, but puts his faith to cleanliness, pure air, sunshine, exercise, simple diet and the contemplation of noble thoughts and lofty ideals and trusts to the processes of nature to restore health. If the naturopath should add prayer to his system of treatment, then under the act of 1907 he would not be liable to prosecution. Hence the prayer part of the treatment takes the naturopath out of reach of the law. The christian science practitioner can diagnose, advise, treat and administer to the needs of the afflicted and sick simply because he has prayers in his methods of treatment. He does not profess to have and neither is her credited with having the skill or knowledge of a naturopath, yet is exempt from the provisions of the law. Such a condition of affairs is unjust. One man denied a right which is accorded another under like circumstances. The defendant, for the reasons given, claims that the act is unconstitutional as discriminating and making a classification not founded on natural or constitutional lines.

In the brief filed by the state the queation was asked, "Would not the physician who advised open air for treatments for incipient consumption be practicing medicine?" and the court in its opinion has suggested the answer. That such would be the practice of medicine if done under the pretense that the one advising claimed to be a regularly licensed physician and gave the advice as one skilled to thus prescribe and thereby obtain money under a false pretense. The defendant likewise asks, "Would not the christian science practitioner who discovers incipient consumption and attempts by his treatments and advise to cure the same, be like-

wise practicing medicine?" The defendant indices his disciple to bathe and be clean and to live in simple fashion. The christian science practitioner instructs his patient to believe that a certain state of mind will cure disease. And by suggestion for a monetary consideration assists his patient to arrive at such a mental state. One relies upon nature and the other upon the cultivation of certain mental conditions, each aiming to restore health. The act discriminates in that it allows the christian science practitioner to practice for money diagnosing, advising and doing anything else he pleases, but it attempts to prohibit the defendant from advising baths or advising open air walking and simple habits of hygiene. It would seem from the reading of the act that the real intent is not so much to protect the public as it is to protect the schools of medicine enumerated in the act.

To extend the scope of the act of 1907 to the length demanded by the medical association would result in throttling completely all attempts to promote scientific treatment of the various ailments of the human body along any other lines than those adopted by the medical societies named in the act. No law can long be held constitutional which attempts to retard the progress of scentific treatment of disease and affliction along new lines and which would arrest the development of systems not yet recognized by the medical schools named. The act is so framed that it is made a penal offense to develop any new mode of treatment no matter how sane and sensible that may be. Fifty years ago yellow fever patients were denied ice and cold water. To-day ice and ice water are among the principal remedies used to combat the deadly "Yellow Jack". But the medical profession fought the introduction of such practices vigorously. Florence Nighingile had the same experience in her battle to secure for her patients fresh night air. The present medical profession have no right to claim the monopoly of all knowledge of the best methods of treating sickness

and affliction. "Bloodless surgery" was a by-word of reproach among medical men until it became popular because Lolita Armour was cured by the famous Viennese surgeon. The Royal University of the Scandinavians are now teaching naturopathy. The great scientific thinking Germany has abolished medical laws after observing the ill effects of such statutes as we have spread upon our books, and no close observer of the development of methods of treating the ills of human flesh would refuse to recognize the preeminence that German medical science is attaining. Naturopathy owes much to the Great Kneipp of Germany. It has no disputes with any branch of medical science. It is simply developong an auxiliary to the healing art i.e. the allowing of nature an opportunity to use its God given curative powers as an aid in the battle against disease.

In closing this brief it may not be out of the way to say, though the same did not appear in evidence at the trial of the case in the Court below, where only the complaining witness testified, that the defendant in preparing for his work spent over [illegible] years in Europe studying naturopathy and its allied subjects, which time was divided as follows: Two years of regular course in the University of Berlin; One year regular course in the University of Leipzig; one year in the Royal University of Sweden; one year traveling through the Scandinavian peninsula with the professor of Naturopathy in that University, which time the professor devoted to lectures on that subject which lectures the defendant attended; one year with Father Kneipp at Woesenshofen, Bavaria and one year with professors Schrottle and Priessnitz, who developed the science of hydropathy or water cure. The defendant is a contributor to the Journal of Naturopathy and Hydropathy and his articles have been quoted with approval by the leading medical journals of Vienna, Paris and Stockholm. He is at present the head of the Naturopathic Institute in Los Angeles, Cal., and has

charge of the College of Naturopathy in Southern California. This possibly may explain the reason why the Medical Board of the State of California, has been so presistent in its attacks on the defendant. His attorney believes that the defendant is entitled to recognition as an expert of the science of Naturopathy and Hydropathy.

The defendant respectfully submits that the Act of 1907, if it prohibits him from giving Naturopathic treatments, is unconstitutional and that the facts of the case cannot be held to sustain the charges of the complaint; also that the act is unconstitutional in that it invades the guarantees of the State and the Federal Constitution of property rights, and creates a privileged class by a classification not founded on natural or constitutional lines.

Respectfully submitted,

Geo. L. Sanders
F. M. Parker

Attorneys for Appellant.

GEORGE L. SANDERS
ATTORNEY AT LAW
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